

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

05-CR-360-A

DAVID CAIN, JR. *et al*,

Defendants.

**ORDER SETTING A TRIAL DATE AND
EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT**

 (April 23, 2007, through October 16, 2007)

On April 23, 2007, the parties appeared before the Court to set a trial date. Assistant United States Attorney Anthony M. Bruce appeared on behalf of the government; defendant David Cain, Jr. appeared by attorney James P. Harrington, appearing of counsel to his attorneys, Daniel Henry and Joel Daniels; Chris Cain appeared by attorney Leigh Anderson; and James Soha appeared by his attorney James P. Harrington.

At that time, the parties provided the Court with an outline of trials in other courts (with expected lengths) and requested that the Court set this case for trial October 16, 2007 and grant a continuance of proceedings in this action to October 16, 2007.

On the basis of the foregoing and on the basis of its review of file of this case, the Court finds

1. Pursuant to 18 U.S.C. § 3161(h)(B)(ii), that this is a complex case due to the nature of the prosecution making it unreasonable to expect adequate preparation for the trial by respective counsel within the 70 day time limit established by 18 U.S.C. § 3161(c)(1);

2. Pursuant to 18 U.S.C. § 3161(h)(B)(I), that the failure to grant a continuance would, given the schedules of the defendant's respective counsel, require the Court to appoint new counsel for defendants David Cain, Jr. and James Soha and require defendant Chris Cain (who is detained) to retain new counsel which counsel would have no familiarity with this case, and which, in turn, would make continuation of the proceedings impossible and result in a miscarriage of justice.

AND the Court further finds, based on all of the foregoing that the ends of justice served by the granting of a continuance to October 16, 2007 outweigh the interests the best interests of the public and the defendant in a speedy trial.

NOW, it is hereby

ORDERED, for the reasons set forth above that the case is hereby adjourned until October 16, 2007; and it is further

ORDERED, that this case is set for trial on October 16, 2007, and it is further

ORDERED, that the time in this action from and including April 24, 2007, to and including October 16, 2007, is properly excluded from the time within which trial must commence, in accordance with the Speedy Trial Act, pursuant to Title 18, United States Code Sections 3161(h)(8)(A) and (B)(i) and (ii).

The Court further finds that as of October 16, 2007, zero (0) days of Speedy Trial Act time will have elapsed in this action and seventy (70) remain in the period within which trial must commence.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: April 28 , 2007